

**Remarks**

Claims 1-60 remain pending in the application and currently stand rejected. Claims 1, 21 and 41 are amended herein. The Assignee respectfully traverses the rejections and requests allowance of claims 1-60.

**Claim Amendments**

Claim 1 is amended to more clearly indicate that the instruction to execute a plurality of tests is received "into the probe device." Claims 21 and 41 are similarly amended.

**Claim Rejections Under 35 U.S.C. § 102**

Claim 1-8, 15-18, 21-28, 35-38, 41-48 and 55-58 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,829,642 to Giroir et al. (hereinafter "Giroir"). The Assignee respectfully traverses the rejection in light of the current amendments to claims 1, 21 and 41, and the following discussion.

Amended claim 1 provides, in part, a method of operating a probe device including the operation of "receiving an instruction *into the probe device* to execute a plurality of tests..." (emphasis supplied). In other words, the probe device receives an instruction from outside the probe device to execute the tests. Amended claims 21 and 41 provide similar limitations.

The Office action indicates Giroir discloses receiving an instruction to execute tests at the Abstract; column 6, lines 5-30; and column 9, lines 47-63. (Page 2 of the final Office action.) Further, in the Response to Arguments, the final Office action alleges that "Giroir does indicate that the probe receives an instruction to execute a test. Giroir discloses that the end user first starts the Client when he wants to access one or more SNA applications. (col. 9, lines 47-63) The starting of the client, as evident in claim 7 (and its description), is essentially the instruction to execute the availability and response time probe." (Page 10 of the final Office action.)

The Assignee respectfully disagrees with this characterization of Giroir. Nowhere does Giroir indicate that a probe device receives an instruction to execute a plurality of tests. More specifically, neither the Abstract nor column 6, lines 5-30, mention receipt of an instruction by a probe device to execute a plurality of tests. Specifically concerning the Response to Arguments, claim 7 does not appear to address the starting of a client or the receipt of an instruction.

Concerning the relative locations of the probes and the clients, column 9, lines 47-63, address the TN3270 Client 601 program, which executes within an end-user workstation (Fig. 4; column 8, lines 57-60) in order to allow the user access to an SNA application via a TN3270 server (Fig. 6; column 9, lines 47-51). The probe software, on the other hand, *simulates* a user client (column 10, lines 42-44) and executes within a Distributed Measurement System located close to the group of end users running the client program (column 12, lines 3-10). Fig. 7 depicts the connections between the *probe* client 702, a TN3270 server 704 and an SNA application 706 employed to perform the testing. (Column 10, lines 17-31.) Fig. 10 provides a view of the probes 1010 within a distributed measurement system 1009 of an IP network 1005. Connected to the network outside of the distributed measurement system 1009 are multiple groups of clients 1001-1004. Thus, the client program and the probes do not reside on the same systems.

Further, Giroir gives no indication that starting the user client program initiates any particular action by a probe, much less providing an instruction to execute a plurality of tests. Instead, Giroir employs an "Availability and Response Time Probe ... to gather measurements on the availability and response time of TN3270 Servers." (Column 10, lines 17-19.) Generally, "the Probe mechanism: (a) connects to SNA applications through each TN3270 Server; (b) measures associated response time; and also (c) detects TN3270 Servers failures and the degradation of the response time." (Column 10, lines 59-64. See also Fig. 8, and column 10, line 65, to column 11, line 37.) As a result, Giroir does not indicate that the probe receives any kind of instruction to execute a test, wherein the test involves connecting to an application and measuring the ensuing response time. Instead, Giroir indicates that the availability and response time tests are run asynchronously to other portions of the system "*at pre-selected or periodical time intervals.*" (Column 11, lines 45-49; emphasis supplied.) An Autoserver code indicating the best TN3270 server for a user client to employ for a particular application is then created within the Autoserver URL system based on the results of the tests. (Fig. 12 and column 12, line 64, to column 13, line 9.) The user client connects to the Autoserver URL system upon start-up to determine the optimum server for accessing a particular application. (Fig. 5 and column 9, lines 16-26. See also column 7, lines 5-8, and column 14, lines 4-8.) That information is derived from the tests *previously* performed by the probes, so the actions of an end-user TN3270 client, such as start-up, do not constitute an instruction to execute a plurality of tests, as provided for in claims 1, 21 and 41.

Thus, for at least these reasons, the Assignee contends claims 1, 21 and 41 are allowable, and such indication is respectfully requested.

Further, as claims 2-8 and 15-18 depend from independent claim 1, claims 22-28 and 35-38 depend from independent claim 21, and claims 42-48 and 55-58 depend from independent claim 41, each of these sets of claims incorporates the limitations of its corresponding independent claims. Therefore, the Assignee contends that claims 2-8, 15-18, 22-28, 35-38, 42-48 and 55-58 are allowable for at least the reasons provided above regarding claims 1, 21 and 41, and such indication is respectfully requested.

Additionally regarding claims 2, 22 and 42, which provide for the probe device being located in a sector of a broadband wireless system, the final Office action indicates that such limitation is provided for in Fig. 10, and column 6, lines 5-30. (Page 3 of the final Office action.) The Assignee asserts otherwise. Giroir makes no mention of sectors of a broadband wireless system, much less as a location for a probe device. Thus, the Assignee believes claims 2, 22 and 42 are allowable for at least this additional reason, and such indication is respectfully requested.

More specifically regarding claims 6-8, 26-28 and 46-48, which provide for one of the tests being a bulk file transfer test, the final Office action states that "Giroir teaches the method of claim 1, wherein one of the plurality of tests comprises a bulk file transfer test." (Page 4 of the final Office action.) The Assignee disagrees with the allegation. Giroir only discusses testing of server availability and response time by way of receiving an Application Welcome Screen as a result of requesting an SNA Application. (Fig. 7 and column 10, lines 20-30.) Thus, the probes of Giroir are not involved in bulk file transfers, much less using such transfers for testing purposes. Thus, the Assignee asserts that claims 6-8, 26-28 and 46-48 are allowable for at least this additional reason, and such indication is respectfully requested.

As to claims 18, 38 and 58, which further provide for the performance information including download speed, the final Office action indicates that Giroir teaches such information. (Page 5 of the final Office action.) The Assignee respectfully disagrees. Again, Giroir only teaches availability and response times of the connections with TN3270 servers, and does not teach or suggest testing or measuring download speed. Thus, the Assignee contends that claims 18, 38 and 58 are allowable for at least this additional reason, and such indication is respectfully requested.

Given the foregoing discussion, the Assignee respectfully requests that the rejection of claims 1-8, 15-18, 21-28, 35-38, 41-48 and 55-58 be withdrawn.

Claim Rejections Under 35 U.S.C. § 103

*Lipa:*

Claims 9-12, 19, 20, 29-32, 39, 40, 49-52, 59 and 60 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giroir in view of U.S. Patent No. 6,061,722 to Lipa et al. (hereinafter "Lipa"). The Assignee respectfully traverses the rejection in light of the foregoing discussion. More specifically, claims 9-12, 19 and 20 depend from independent claim 1, claims 29-32, 39 and 40 depend from independent claim 21, and claims 49-52, 59 and 60 depend from independent claim 41, and thus incorporate the limitations of their corresponding independent claims. Thus, the Assignee asserts that each of claims 9-12, 19, 20, 29-32, 39, 40, 49-52, 59 and 60 is allowable for at least the reasons set forth above regarding their associated independent claims, and such indication is respectfully requested.

Additionally with respect to claims 12, 32 and 52, the final Office action indicates that Lipa teaches forward error correction testing. The Assignee respectfully disagrees. Lipa appears to exclusively employ ping and reply packets for purposes of connection testing. (See column 6, line 57, to column 7, line 50; and column 8, line 25, to column 9, line 16, for example.) Lipa makes no mention of forward error correction testing. Thus, the Assignee asserts that claims 12, 32 and 52 are allowable for at least this additional reason, and such indication is respectfully requested.

Therefore, based on the foregoing, the Assignee respectfully requests the rejection of claims 9-12, 19, 20, 29-32, 39, 40, 49-52, 59 and 60 be withdrawn.

*Fijolek:*

Claims 13, 14, 33, 34, 53 and 54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giroir in view of U.S. Patent No. 6,553,568 to Fijolek et al. The Assignee respectfully traverses the rejection in light of the foregoing discussion. Claims 13 and 14 depend from independent claim 1, claims 33 and 34 depend from independent claim 21, and claims 53 and 54 depend from independent claim 41. Therefore, each of these claims incorporates the limitations of its corresponding independent claim. Thus, the Assignee asserts that each of

claims 13, 14, 33, 34, 53 and 54 is allowable for at least the reasons set forth above regarding their associated independent claims, and such indication is respectfully requested.

More specifically regarding claims 13, 33 and 53, which provide for the plurality of tests including an out of lock indicator test, the final Office action indicates that Fijolek teaches such a test. (Page 8 of the final Office action.) The Assignee respectfully disagrees with this assertion, as no mention is made of an out of lock indicator test. Also, as to claims 14, 34 and 54, which provide for an out of lock indicator test that determines the presence of a clean Quadrature Amplitude Modulation (QAM) signal, page 9 of the final Office action indicates that Fijolek teaches such a determination. The Assignee respectfully disagrees. Fijolek mentions the use of QAM as a modulation method (column 8, lines 19-28), but testing for an out of lock indicator signal, or for the presence of a clean QAM signal, is not discussed. Thus, the Assignee contends that claims 13, 14, 33, 34, 53 and 54 are allowable for at least these additional reasons, and such indication is respectfully requested.

Therefore, given the reasons presented above, the Assignee respectfully requests withdrawal of the rejection of claims 13, 14, 33, 34, 53 and 54.

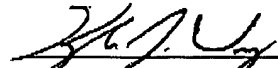
#### Conclusion

Based on the above remarks, the Assignee submits that claims 1-60 are allowable. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Assignee thus respectfully requests allowance of claims 1-60.

The Assignee believes no additional fees are due with respect to this filing. However, should the Office determine additional fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

Date: 7/19/05



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